Supreme Court, U.S.
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No. 90-1936

In The

Supreme Court of the United States

October Term, 1990

PARKER SOLVENTS COMPANY, INC.,

Petitioner,

v.

ROYAL INSURANCE COMPANIES OF AMERICA,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR DENYING WRIT

Petitioner argues that it is entitled to a review on writ of certiorari, without regard that such a review is not a matter of right. "A petition for a writ of certiorari will be granted only when there are special and important reasons therefor." Rule 10, Rules of the Supreme Court. Petitioner has stated no justification for this matter to be reviewed.

Petitioner offered multiple arguments to both the district court and the Court of Appeals. In each instance, it asked the court to distinguish the virtually identical provisions of the applicable Missouri and Arkansas laws so as to avoid the ruling of *Continental Ins. Co. v. Northeastern Pharmaceutical & Chemical Co., Inc. (NEPACCO)*, 842 F.2d 977 (8th Cir.) (en banc), *cert. denied*, 488 U.S. 821 (1988). Additionally, it asked that *NEPACCO* be found factually distinguishable. These arguments were rejected by both courts.

In its request for review, petitioner takes liberties in presenting the facts. Contrary to its contention, the Court of Appeals did not state that "it was required to give great weight to the decision of the District Judge on the question of state law." Nor did it "rely" on *Harbor Ins. Co. v. Essman*, 918 F.2d 734 (8th Cir. 1990) and *Grisham v. Commercial Union Ins. Co.*, 927 F.2d 1039 (8th Cir. 1991) in reaching its conclusion. However, petitioner requires such facts to foster its argument that the Court of Appeals employed an improper standard of review in contradiction of the holding in *Salve Regina College v. Russell*, 499 U.S. ___, 111 S.Ct. 1217, 113 L.Ed.2d 190 (1991).

The Eighth Circuit rejected petitioner's argument that *NEPACCO* was inapplicable under Arkansas law. In affirming the district court's ruling, the court stated it had "reviewed the record and considered [Parker's] arguments." Parenthetically, the court noted that it was mindful of its practice of affording great weight to the district judge in such matters. However, there was no indication, as petitioner suggests, that the district judge's findings were accepted in lieu of an independent analysis of appellant's argument and the applicable state law.

Petitioner's case was decided shortly after the factually similar case of *Grisham v. Commercial Union Ins. Co., supra.* That matter was decided on March 11, 1991 but was vacated upon the grant of a Petition for Rehearing on April 11, 1991. Although the Eighth Circuit's opinion made reference to *Grisham,* it was not as a direct basis for the holding, but rather as support of the proposition. Even if *Grisham* were ultimately overturned on review, it would not necessarily follow that petitioner would be entitled to a similar determination.

After the *Grisham* decision was announced, those appellants filed a timely Petition for Rehearing. Their petition was filed three days prior to the Supreme Court's decision in *Salve Regina College v. Russell, supra,* and five days prior to the decision in this case. Although *Grisham* and *Parker* involved similar legal issues, petitioner did not make a timely request for rehearing. It was not until it subsequently learned that Grisham had filed a Petition for Rehearing which had been granted that it made a belated effort to grab a coattail.

Petitioner's contention that it is entitled to a de novo review rings hollow. It relies on the grant of a rehearing in *Grisham* for support, but the vacated *Grisham* opinion was not given as the basis for the court's opinion in this case. Rather, it was cited as further support for the decision reached after a review of the record and consideration of the arguments.

In comparing itself to the appellants in *Grisham*, petitioner loses sight of the diligence displayed by those appellants in timely requesting a rehearing, even prior to the *Salve Regina* decision. Petitioner, on the other hand, failed to file a timely petition, although the *Salve Regina* opinion on which it now relies preceded the ruling in this case.

Petitioner is in no more precarious position than any other party who has lost on appeal. The pendency of *Grisham* is inconsequential since *Grisham* did not form the basis for the Eighth Circuit's decision in this case; it simply supported it. However, in the absence of any self-restricting deference to the district judge in this post-*Salve Regina* case, petitioner seeks to take advantage of the Eighth Circuit's professed deferral to the district judge in its pre-*Salve Regina* decision in *Grisham*.

CONCLUSION

Based on the Eighth Circuit's decision in *Parker Solvents v. Royal Ins. Co.*, it is unlikely that the *Grisham* decision will be reversed. However, even if it were, petitioner has no right to further review. The matter was finally decided by the Eighth Circuit. Petitioner has announced no "special or important" reasons for a review by this court. Under the standard of review announced in *Salve Regina*, the Eighth Circuit's decision does not depart from the accepted and usual course of judicial proceedings. There is no need for this Court's power of supervision. Accordingly, respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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